

88TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } No. 411

MISSING PERSONS ACT

JUNE 18, 1963.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RIVERS of South Carolina, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany H.R. 2989]

The Committee on Armed Services, to whom was referred the bill (H.R. 2989) to further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendments are as follows:

On page 1, strike out lines 8 and 9, and on page 2, strike out lines 1 and 2, and insert in lieu thereof the following:

“(1) a member of the uniformed services as defined in section 101(3) and (23) of title 37, United States Code;” and”.

On page 4, strike out lines 4, 5, and 6, and substitute in lieu thereof the following:

“in section 101(3) and (23) of title 37, United States Code; or”.

The purpose of the proposed legislation is to clarify existing law so as to improve the administration of the Missing Persons Act. At present, the benefits of the Missing Persons Act are provided for persons within the scope of the act who are “officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, or besieged by a hostile force.” All of these terms, with the exception of the word “missing” standing alone and possibly “interned in a foreign country” were originally predicated upon a declared war and if treated literally, would imply a condition of declared war.

The proposed amendments to the Missing Persons Act would add the words “detained in a foreign country against his will” and would thus provide specific coverage in cold war situation for military and

civilian personnel employed by the Federal Government who are in this situation. To assist further in an orderly and equitable administration of the act, the amendments reestablish the former policy of deferment of Federal income tax reporting and payment during the period such personnel are in a missing status.

The need for clarifying legislation to perfect the administration of the Missing Persons Act is illustrated by the cases of the two RB-47 pilots shot down by the Soviets over the Barents Sea on July 1, 1960. Capt. John R. McKone and Capt. Freeman B. Olmstead were released on January 26, 1961 without having been tried. The carrying of Captain McKone and Captain Olmstead, the RB-47 pilots, in a "missing" status during their absence, the only term of existing law that had literal application to their situation, when for all practical purposes their whereabouts were known, provided an administrative anomaly for the Air Force. In addition, had Captain McKone and Captain Olmstead been tried and forced to serve 10-year sentences, administration under the present terminology of the law would be strained.

Section 13 of the Missing Persons Act would also be amended to provide for the filing and payment of income tax on the 15th day of the 3d month after termination of the "missing" status or after an executor, administrator, or conservator of the estate of a missing person has been appointed. This provision was an integral part of the Missing Persons Act when it was approved in 1942 and continued in effect until December 31, 1947. It was not reestablished when the remainder of the act was reactivated by the Selective Service Act of 1948. As in the illustration above, in a cold war situation there is increased potential that individuals determined to be covered under the Missing Persons Act may continue in the "missing" status for an extended period of time. During such disability the individual is unable to file and pay taxes on his own behalf, and under the Revenue Code, there is no one who is responsible for filing on his behalf. Should the normal 3-year period for filing for refund by the individual run out during the period of disability, or if interest is running on additional tax due from him, no relief is authorized by the Revenue Code. The proposed provision is considered to be necessary for orderly and equitable administration of the affairs of missing persons.

The balance of the changes are technical and merely define the military personnel who are covered under the act in consonance with the definition provided in title 37, United States Code 231. The clarification will allow for common application of the present definitions and obviate the need for future amendments to meet changes in military personnel designations.

Enactment of the proposed legislation will not result in any increased cost for the Department of Defense.

The Committee on Armed Services unanimously recommends enactment of the proposed legislation.

Enactment of the proposed legislation is recommended by the Department of Defense, and the Bureau of the Budget interposes no objection, as indicated by the following letter from the Secretary of the Air Force hereby made a part of this report.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, January 8, 1963.

Hon. JOHN W. McCORMACK,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation to further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes.

This proposal is a part of the Department of Defense legislative program for the 88th Congress and the Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

This proposal would specifically apply the Missing Persons Act (MPA) (50 U.S.C. App. 1001 et seq.) to persons in the Federal service whose accounts and affairs are determined under the act, during those periods when a state of war does not exist. It would clarify the definition of "missing persons" by identifying, as an additional category, those persons who are "detained in a foreign country against his (their) will." This terminology would include any situation which would involve persons who are separated from their organizations or interrupted in their assignments by the action of a foreign power. Exceptions to this general rule would be cases in which an official determination of the head of the department concerned (50 U.S.C. App. 1009) would bar an individual from receipt of the benefits provided by the act, that is, absence without authority, imprisonment by a court having jurisdiction under status-of-forces agreements, etc. It would also reestablish the former policy of delay in Federal income tax reporting and payment and clarify other administrative matters pertaining to the affairs of such individuals.

The MPA now provides, among other things, for continuation of pay and allowances of persons "officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force". All of these terms, with the exception of the word "missing" standing alone and possibly "interned in a foreign country", if treated literally, would imply a condition of declared war. Today a person engaged in "cold war" or other governmental activity may be apprehended and held, or tried by a foreign power, with a lengthy prison term to be served in the foreign country. Specific coverage is recommended, therefore, for personnel who are lost or detained under other than wartime battle conditions.

In current administration of the act, persons are classified as "missing" whenever the circumstances do not relate to one of the other listed categories. Although it is believed that such classification by the head of the department concerned is clearly within the intent of the act, an administrative anomaly is created thereby. For example, the two Air Force officers who were recently released by the

Soviets were carried in a missing status during their detention, although their whereabouts was known.

These situations were evidently not foreseen when the MPA was enacted. Our present interest is in obtaining clear authority for providing all the benefits of the MPA to those personnel who may be detained by a foreign power. There is no increase in benefits involved. Rather, this is a request for clarification of what is felt to be the original intent of the MPA with respect to coverage.

COST AND BUDGET DATA

The passage of this legislation will not increase costs to the Department of Defense since we are presently applying the MPA to persons who are carried as "missing."

Sincerely,

EUGENE M. ZUCKERT.

SECTIONAL ANALYSIS

Clause (1)(A) amends section 1(a) of the MPA to adopt by reference the definition of the term "member of the uniformed services", contained in section 102 (a) and (b) of the Career Compensation Act of 1949. This specifies the military personnel covered by the MPA and will obviate the need for future amendments of the MPA in the event any change is made in the definition of that term in title 37, United States Code, Pay and Allowances of the Uniformed Services. It also makes a technical change to reflect the substitution of a new clause (1) for existing clauses (1) and (2).

Clause (1)(B) is a technical amendment to reflect the redesignation of clause (3) as clause (2), in section 1(a) of the MPA.

Clause (2)(A) is a clarifying amendment which expressly adds the Air Force to the services to which the term "active service" applies, in section 1(b) of the MPA.

Clause (2)(B) is a technical amendment to reflect the redesignation of clause (a)(3) as (a)(2), in clause (1)(B), above.

Clause (3)(A) amends the first sentence of section 2(a) of the MPA by adding, as an additional category of missing persons, those who are "detained in a foreign country against his (their) will". It thereby provides specific authority for the application of the MPA during periods when a state of war does not exist, and coverage for persons who disappear, or are apprehended and held, under other than battle conditions. It covers situations involving persons who are separated from their organizations or interrupted in their assignments by the action of a foreign force. The change removes the administrative anomaly now occurring when the persons whose whereabouts are known must be carried in a "missing" status because there is no specific category covering them. Exception to this general rule would be cases in which an official determination of the head of the department or agency concerned (which determination is authorized and required by secs. 2 and 9 of the MPA) would bar an individual from receipt of the benefits provided by the act, that is, absence without authority, imprisonment by a court having jurisdiction under status of forces agreements, etc.

Clause (3)(B) amends section 2(a) of the MPA by adding the words "or employment" to specify that the expiration of a term of employment of a civilian will not terminate his entitlement to pay and allowances during absence under the conditions specified.

Clause (3)(C) amends the last sentence of section 2(a) of the MPA, relating to persons performing full-time duty or inactive duty training, by adding the additional category described in clause (3)(A), above.

Clause (4) is technical in nature and amends section 5 of the MPA, relating to departmental review of missing status, to make it responsive to, and consistent with, section 2 of the MPA as expanded by the amendment made by clause (3)(A) of the bill.

Clause (5) is technical in nature and amends section 6 of the MPA, relating to payment of allotments and allowances for persons in missing status, to make it responsive to, and consistent with, section 2 of the MPA, as expanded by the amendment made by clause (3)(A) of the bill.

Clause (6) is a technical amendment designed to delete unnecessary language from section 7 of the MPA.

Clause (7) expressly adds the Air Force to the listing of military services set forth in section 10 of the MPA, relating to the determination of dependency under laws providing for the payment of pay, allowances, or other emoluments to enlisted personnel.

Clause (8) is technical in nature and amends section 12 of the MPA, relating to the movement of dependents and household and personal effects of persons in a missing status, to make it responsive to, and consistent with, section 2 of the MPA as expanded by the amendment made by clause (3)(A) of the bill.

Clause (9) restates that portion of section 13 of the MPA, relating to income tax deferment of persons in a missing status. At present, in the administration of missing person cases under the Internal Revenue Code, no satisfactory legal method is provided for the filing of returns and final settlement of tax obligations. For example, in a cold-war situation the "missing" person is unable to file and pay taxes on his own behalf and there is no one who is responsible for filing for him, should the normal 3-year period for filing for refund run out while he is under this disability or, if interest is running on additional tax due from him, no relief is authorized by the Revenue Code. As restated, provision is made for the filing and payment of income tax on the 15th day of the third month after termination of the "missing" status, or after an executor, administrator, or conservator of the estate of a missing person has been appointed. This provision was an integral part of the MPA at the time it was enacted in 1942 and continued in effect until December 31, 1947. It was not reestablished when the remainder of the act was reactivated by the Selective Service Act of 1948. This provision is designed to facilitate the orderly and equitable administration of the tax affairs of "missing" persons. As restated, the section also incorporates changes of a technical nature to make section 13 of the MPA responsive to, and consistent with, sections 1 and 2 of the MPA, as amended by the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

50 U.S.C. APP. 1001 ET SEQ.

(a) the term "person" means (1) [commissioned officer, warrant officer, enlisted person (including persons selected under the Selective Training and Service Act, as amended), member of the Army or Navy Nurse Corps (female), wherever serving; (2) commissioned officer of the Coast and Geodetic Survey or the Public Health Service; and (3)] *a member of the uniformed services as defined in section 101(3) and (23) of title 37, United States Code; and (2)* Civilian officers and employees of the departments, exclusive of part time or intermittent employees or native labor casually hired on an hourly or per diem basis, who are citizens or nationals of the United States, or who are aliens who have been admitted to the United States for permanent residence, except that the following categories of civilian officers and employees shall be covered only upon a determination by the head of the department concerned that such status is the proximate result of employment by the department:

(i) persons who enter any status listed in section 2 of this Act within the continental limits of the United States and

(ii) persons who enter any status listed in section 2 of this Act who are residents at or in the vicinity of their places of employment in the Territories and possessions or in foreign countries and who were not living there solely as a result of their employment.

(b) the term "active service" means active service in the Army, Navy, *Air Force*, Marine Corps, and Coast Guard of the United States, including active Federal service performed by personnel of the retired and reserve components of these forces, the Coast and Geodetic Survey, the Public Health Service, and active Federal service performed by the civilian officers and employees defined in [paragraph (a)(3)] *paragraph (a)(2) above;*

* * * * *

SEC. 2. (a) Any person who is in the active service, or is performing full-time training duty, other full-time duty, or inactive duty training and who is officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, [or] *besieged by a hostile force, or detained in a foreign country against his will* shall, for the period he is officially carried or determined to be in any such status, be entitled to receive or to have credited to his account the same basic pay, special pay, incentive pay, basic allowance for quarters, basic allowance for subsistence, and station per diem allowances for not to exceed ninety days, to which he was entitled at the beginning of such period of absence or may become entitled thereafter, except that the pay and allowances for a person who is performing full-time training duty or other full-time duty without pay, or inactive duty training with or without pay, shall be that to which he would have been entitled if he had been performing full-time active duty with pay, and entitlement to pay and allowances shall terminate upon the date of receipt by the department concerned of evidence

that the person is dead or upon the date of death prescribed or determined under provisions of section 5 of this Act. Such entitlement to pay and allowances shall not terminate upon the expiration of a term of service or employment during absence and, in case of death during absence, shall not terminate earlier than the dates herein prescribed. There shall be no entitlement to pay and allowances for any period during which such person may be officially determined absent from his post of duty without authority and he shall be indebted to the Government for any payments from amounts credited to his account for such period. Persons performing full-time training duty, or inactive duty training shall be entitled to the benefits of this section only when such persons are officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, [or] besieged by a hostile force, or detained in a foreign country against their will as a result of the performance of prescribed duty ordered by competent authority.

* * * * *

SEC. 5. When the twelve months' period from date of commencement of absence is about to expire in any case of a person [missing or missing in action] entitled under section 2 of this Act to receive or be credited with pay and allowances and no official report of death or of [being a prisoner or of being interned] the circumstances of the continued absence has been received, the head of the department concerned shall cause a full review of the case to be made. Following such review and when the twelve months' absence shall have expired, or following any subsequent review of the case which shall be made whenever warranted by information received or other circumstances, the head of the department concerned is authorized to direct the continuance of the person's missing status, if the person may reasonably be presumed to be living, or is authorized to make a finding of death. When a finding of death is made it shall include the date upon which death shall be presumed to have occurred for the purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities and such date shall be the day following the day of expiration of an absence of twelve months, or in cases in which the missing status shall have been continued as hereinbefore authorized, a day to be determined by the head of the department.

SEC. 6. When it is officially reported by the head of the department concerned that a person missing under the conditions specified in section 2 of this Act is alive [and in the hands of a hostile force or is interned in a foreign country], the payments authorized by section 3 of this Act are, subject to the provisions of section 2 of this Act, authorized to be made for a period not to extend beyond the date of the receipt by the head of the department concerned of evidence that the missing person is dead or has returned to the controllable jurisdiction of the department concerned. When a person missing [or missing in action] under the conditions specified in section 2 of this Act is continued in a missing status under section 5 of this Act, such person shall continue to be entitled to have pay and allowances credited as provided in section 2 of this Act and payments of allotments, as provided in section 3 of this Act, are authorized to be continued, increased, or initiated.

SEC. 7. The head of the department concerned is authorized to direct the payment of new allotments from the pay of persons in active service (other than persons entitled under section 2 or section 14 of this Act to receive pay and allowances) to increase or decrease the amount of any allotment heretofore or hereafter made by such persons and to continue payment of any allotments of such person, which may have expired [in November 1941 and any month subsequent thereto], with or without the consent of such person, subject in all cases to termination by specific request of such persons, whenever in the judgment of the head of the department such action is considered essential for the well-being and protection of dependents of persons in active service.

* * * * *

SEC. 10. The determination of the fact of dependency under the provisions of this Act, the determination of the fact of dependency for the purpose of payment of all six months' death gratuities as authorized by law, and the determination of the fact of dependency under the provisions of any and all other laws providing for the payment of pay, allowances, or other emoluments to enlisted personnel in the Army, Navy, *Air Force*, Marine Corps, and Coast Guard of the United States where such payments are contingent upon dependency, shall be made by the head of the department concerned, or by such subordinate as he may designate, and any such determination so made shall be final and conclusive.

* * * * *

SEC. 12. The dependents and household and personal effects of any person in active service (without regard to pay grade) who is officially reported as dead, injured, [missing for a period of thirty days or more, interned in a foreign country, or captured by a hostile force] *absent for a period of thirty days or more in any status listed in section 2 of this Act*, may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or to the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with regulations issued by the head of the department concerned; or, upon application by such dependent, next of kin, or other person, or upon the person's application if injured, to such other location as may be determined in advance or subsequently approved by the head of the department concerned or by such person as he may designate. When the head of the department concerned determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from such sale shall be transmitted to the owner or to the other persons in accordance with regulations issued by head of the department concerned; but if there be no such persons or if such persons or their addresses are not ascertainable within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts. Claims for net proceeds which are covered into the Treasury under the authority of this section may be filed with the General Accounting Office by the

rightful owners; their heirs or next of kin, or their legal representatives at any time prior to the expiration of five years from the date the proceeds are covered into the Treasury; and, if so filed, the General Accounting Office shall allow or disallow the claim. When such claim is allowed it shall be paid from the appropriation for refunding moneys erroneously received and covered. If claims are not filed prior to the expiration of five years from the date the proceeds are covered into the Treasury, they shall be barred from being acted on by the courts or the General Accounting Office. The provisions of this section do not amend or repeal the Federal Tort Claims Act (60 Stat. 842-847), as amended; sections 2575, 2733, 4712, 4713, 6522, 9712, 9713, title 10, United States Code; or section 507, title 14, United States Code. The head of the department concerned is authorized to store the household and personal effects of the person until such time as proper disposition can be made. The cost of such storage and transportation, including packing, crating, drayage, temporary storage, and unpacking of household and personal effects, shall be charged against appropriations currently available. In lieu of transportation authorized by this section for dependents, the head of the department concerned may authorize the payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of travel for which transportation in kind is not furnished, when such travel shall have been completed. When the person is in an "injured" status, the movement of dependents or household and personal effects provided for herein may be authorized only in cases where the anticipated period of hospitalization or treatment will be of prolonged duration. No transportation shall be authorized pursuant to this section upon application by dependents unless a reasonable relationship exists between the condition and circumstances of the dependents and the destination to which transportation is requested. Beginning June 25, 1950, and for the purposes of this section only, the terms "household and personal effects" and "household effects" may include, in addition to other authorized weight allowances, not to exceed one privately owned motor vehicle, shipment of which at Government expense is authorized in those cases where the vehicle is located outside the continental limits of the United States or in Alaska.

SEC. 13. Notwithstanding any other provision of law, in the case of any taxable year beginning after December 31, 1940, no Federal income-tax return of, or payment of any Federal income tax by—

[(a) any individual in the military or naval forces of the United States,]

(1) a member of the uniformed services as defined in section 101 (3) and (23) of title 37, United States Code; or

[(b) (2) any civilian officer or employee of any [department who, at the time any such return or payment would otherwise become due, is a prisoner of war or is otherwise detained by any foreign government with which the United States is at war, or] department;

[(c) any individual in the military or naval forces of the United States serving on sea duty or outside the continental United States] who, at the time any such return or payment would otherwise become due, is absent from his duty station under the conditions specified in section 2 of this Act, shall become due until [one] the earlier of the following [dates, which ever is the earliest:] dates—

[(1)] (4) the fifteenth day of the third month [following the month] in which he [ceases] *ceased* (except by reason of death or incompetency) to be [a prisoner of war, or to be detained by any foreign government with which the United States is at war, or to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States as the case may be] *absent from his duty station under the conditions specified in section 2 of this Act, unless [prior to] before the expiration of [such] that fifteenth day he again is [a prisoner of war, or is detained by any foreign government with which the United States is at war, or is a member of the military or naval forces of the United States serving on sea duty or outside the continental United States] absent from his duty station under the conditions specified in section 2 of this Act; or*

[(2)] December 31, 1947; or

[(3)] (B) the fifteenth day of the third month following the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

Such due date is prescribed subject to the power of the [Commissioner of Internal Revenue] *Secretary of the Treasury or his delegate* to extend the time for filing such return or paying such tax, as in other cases, and to assess and collect the tax as provided in sections [146, 273, and 274] *6851, 6861, and 6871* of the Internal Revenue Code of 1954 in cases in which such assessment or collection is jeopardized and in cases of bankruptcy or receivership. [For the purpose of this section, the term "continental United States" means the States and the District of Columbia, and the terms "individual" or "member" of the military or naval forces of the United States means any person in the Army of the United States, the United States Navy, the Marine Corps, the Army or Navy Nurse Corps (female), the Coast Guard, the Coast and Geodetic Survey or the Public Health Service.]

SUMMARY OF H.R. 2989

Purpose of the bill

To amend the Missing Persons Act by adding the words "detained in a foreign country against his will" so as to provide specific coverage in cold war situations for military and civilian personnel employed by the Federal Government who are in this situation.

In addition, the proposed legislation would assist further in an equitable administration of existing law by reestablishing the former policy of deferring Federal income tax reporting and payment during the period such personnel are in a missing status.

The bill amends existing law.

Explanation of committee amendments

The amendments are purely technical in nature.

Fiscal data

No cost to the Government.

Departmental data

The Bureau of the Budget interposes no objection, and the Department of Defense recommends enactment.

Committee position

The Committee on Armed Services unanimously recommends enactment.